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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,435	12/23/2003	John Baranowski	016354.0208	7528
24735	7590	12/28/2006		
BAKER BOTTS LLP C/O INTELLECTUAL PROPERTY DEPARTMENT THE WARNER, SUITE 1300 1299 PENNSYLVANIA AVE, NW WASHINGTON, DC 20004-2400			EXAMINER KUMAR, RAKESH	
			ART UNIT 3654	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		NOTIFICATION DATE	DELIVERY MODE	
3 MONTHS		12/28/2006	ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 12/28/2006.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/743,435	BARANOWSKI, JOHN	
	Examiner	Art Unit	
	Rakesh Kumar	3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 13 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Final Rejection

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 10/743,425, claims 1-20 of copending Application No. 10/743,426, claims 1-10 of copending Application No. 10/743,440, claims 1-80 of copending Application No. 10/601,669, claims 1-40 of copending Application No. 10/601,674 and claims 1-31 of copending Application No. 10/601,670. Although the conflicting claims are not identical, they are not patentably distinct from each other because they all have a dispenser comprising one of more dispensing paths, dispensing

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chute, dispensing heads, a sensing unit, holding chamber, a star wheel, controller for regulating said dispenser, rotating said dispensing paths with a rotational drive and a vibrating device for agitating said dispensing paths.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mikami (U.S. Patent Number 4,398,612) in view of Wooldridge (U.S. Patent Number 6,360,870).

Referring to claims 1-3 and 6-11. Mikami discloses a bulk or a single item dispensing system comprising;

a feeder bowl (1) for receiving the items and for supplying the items to the one or more dispensing paths (3);

a dispenser (Figure 1) comprising one or more dispensing paths (3) for dispensing items;

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a rotation drive for rotating the one or more dispensing paths; and
and one or more dispensing heads (14 and 15), wherein each of the one or more dispensing heads (14 and 15) receives items from at least one of the one or more dispensing paths (3) and comprising;

a dispensing chute (chute for members 14 and 15) for directing a first plurality of the received items toward the dispenser, wherein at least one physical characteristic of each of the first plurality of the received items is within a predetermined range of physical characteristics (weight);

and a diversion chute(20) for directing a second plurality of the received items away from the dispenser;

wherein the system further comprises one or more sensing units (8,8',13 and 14), wherein each of the one or more sensing units (8,8',13 and 14) measure the at least one physical characteristic (weight) of at least one portion of the items dispensed from at least one of the one or more dispensing paths (3),

wherein each of the dispensing heads (13 and 14) receives items from at least one of the dispensing paths (3) via at least one of the sensing units (8,8',13 and 14);

each dispensing head (13 and 14) comprises a holding chamber (Col. 4 and 30-50) directing the path of the items by the opening and closing of members (17 and 18);

the dispenser comprising a vibration device (7) for vibrating the dispensing paths, a second vibration device (2) for vibrating a feeder bowl (1) controlled by a control unit (Figure 6-9).

Mikami does not disclose a rotation drive for rotating the one or more dispensing paths.

Wooldridge discloses a feeding and sorting apparatus wherein a rotation drive rotates (Figure 3) one or more dispensing paths (26) in order to dispense articles.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Mikami to include a rotation drive for rotating the one or more dispensing paths as taught by Wooldridge because centripetal force could be used to dispense the articles

Claims 4, 5 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mikami in view of Wooldridge as applied to claim 1 above, and further in view of Hudson (U.S. Patent Number 3,782,878).

Referring to claims 4,5 and 12. Hudson discloses a rotary dispenser (Figure 2) comprising a rotatable star wheel (21; Col. 2 line 30) comprising a plurality of container-receiving grooves (21a) for positioning containers (20; Figure 1-3) in alignment with one of the dispensing heads (15, strainer),

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the apparatus of Mikami in view of Wooldridge and include a star wheel as taught by the teaching of Hudson because the apparatus could

position containers in alignment to be filled as the items are dispensed from the dispenser.

Claim 13 rejected under 35 U.S.C. 103(a) as being unpatentable over Mikami in view of Wooldridge and Hudson as applied to claim 12 above, and further in view of Simionato (U.S. Patent Number 5,613,590).

Referring to claim 13. Simionato disclose a dispenser apparatus comprising a conveyor as a delivery means (Figure 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the apparatus of Mikami in view of Wooldridge and Hudson to include a conveyor as a delivery means to deposit items onto the feeder bowl as taught by Simionato because it would prevent jamming of the apparatus.

Response to Arguments

Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection. See rejections above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

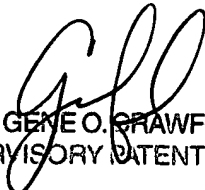
The prior art made of record and not specifically relied upon is considered pertinent to applicant's disclosure in this application are cited in the document labeled "Notice of References Cited" along with this Office.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rakesh Kumar whose telephone number is (517) 272-8314. The examiner can normally be reached on 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RK
December 21, 2006


GENE O. CRAWFORD
SUPERVISORY PATENT EXAMINER